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End of Year 2024 Reminders & Actions

In brief

Date	Changes and actions
30 June 2023	• Temporary full expensing for depreciating assets ends. • Bonus deduction under the 'Technology boost' ends. • Loss carry back measures that allowed losses to be applied against prior year taxable profits ends.
1 July 2023	• Small business instant asset write-off for depreciating assets costing less than $20,000 commences.^ • $20,000 small business energy boost commences.*
21 May 2024	• FBT return and payments due if applicable unless lodging electronically through a tax agent.
25 June 2024	• FBT return and payments due if lodging electronically through a tax agent.
Pre-30 June 2024	• Review shareholder loan accounts and make minimum loan repayments (may need to declare dividends). • Pay superannuation to deduct contributions in the current financial year • Complete a stocktake where required (see *Do you need to do a stocktake?*). • Write-off bad debts and scrap any obsolete stock or plant and equipment. • Ensure any inter-entity management fees have been raised.
30 June 2024	• $20,000 small business energy boost scheduled to end.* • Skills & training boost ends.

1 July 2024	• Personal income tax rates and thresholds change. • Super guarantee rate increases to 11.5%. • Small business energy incentive commences.*
14 July 2024	• Single touch payroll finalisation declarations need to be made (extensions can apply for closely held employees).
28 July 2024	• Quarterly super guarantee payment due (1 April – 30 June).
28 August 2024	• Taxable payments annual reports for payments to contractors due.
1 July 2025	• Super guarantee rate increases to 12%.

**Subject to legislation. Not yet law.*

^Parliamentary disagreement on whether to increase the threshold to $30,000 and apply to businesses with a group turnover of less than $50m. Also subject to legislation and not yet law.

What's new

Personal income tax thresholds from 1 July 2024

The personal income tax rates and thresholds will change from 1 July 2024. If your business is an employer, it will be important to ensure that your payroll systems are accurate including for any salary packaging arrangements with staff members.

Resident individual taxpayers		
Tax rate	**2023-24**	**2024-25**
0%	$0 – $18,200	$0 – $18,200
16%		$18,201 – $45,000
19%	$18,201 – $45,000	
30%		$45,001 – $135,000
32.5%	$45,001 – $120,000	
37%	$120,001 – $180,000	$135,001 – $190,000
45%	>$180,000	>$190,000

For working holiday makers, the first $45,000 is taxed at 15%.

Superannuation Guarantee increases to 11.5%

The Superannuation Guarantee (SG) rate will rise from 11% to 11.5% on 1 July 2024 and will continue with a final increase to increase to 12% on 1 July 2025.

If your business is an employer, what this will mean depends on your employment agreements. If the employment agreement states the employee is paid on a 'total remuneration' basis (base plus SG and any other allowances), then their take home pay might be reduced by 0.5%. That is, a greater percentage of their total remuneration will be directed to their superannuation fund. For employees paid a rate plus superannuation, then their take home pay will remain the same and the 0.5% increase will be added to their SG payments.

Small business energy credit

Announced in the 2024-25 Federal Budget, from 1 July 2024, small businesses that meet the relevant State or Territory definition of a 'small customer' will receive a $325 rebate on energy bills. The definition is based on electricity consumption thresholds. Find out more at the energy.gov.au.

Instant write-off for depreciating assets in limbo

In the 2023-24 Federal Budget, the Government announced that small businesses with an aggregated turnover of less than $10 million will be able to immediately deduct the full cost of eligible depreciating assets costing less than $20,000 that are first used or installed ready for use between 1 July 2023 and 30 June 2024. In the 2024-25 Federal Budget, the Government extended this measure to 30 June 2025.

Without these measures, the instant asset write-off threshold would be $1,000.

However, legislation to enact the 2023-24 measure has not passed Parliament due to disagreements between the Senate and House of Representatives on whether:

- To increase to the instant asset write-off cost limit to assets costing less than $30,000; and
- To expand the range of businesses able to access the instant asset write off to include those with an aggregated annual turnover of less than $50m.

As currently proposed, the increased threshold also applies to determine whether the full balance of the small business pool is written off in the 2024 income year.

This initiative is not yet law and we will keep you up to date on any progress.

$20,000 small business energy incentive also in limbo

The Small Business Energy Incentive, which provides an additional 20% deduction on the cost of eligible depreciating assets or improvements to existing depreciating assets that support electrification and more efficient use of energy, is not yet law. The legislation enabling the incentive is in the same Bill as the instant asset write-off measure.

The incentive was set to apply to eligible assets first used or installed ready for use, or the improvement costs incurred, between 1 July 2023 and 30 June 2024.

Up to $100,000 of total expenditure is expected to be eligible with a maximum bonus deduction of $20,000.

If enacted, the incentive will be available to small and medium businesses with an aggregated annual turnover of less than $50 million.

In terms of what types of assets are eligible, a new depreciating asset would broadly be eligible for the bonus deduction if:

- It uses electricity and there is a new reasonably comparable asset that uses a fossil fuel available in the market (e.g., the taxpayer chooses an electric asset over a gas / petrol powered asset);
- It uses electricity and is more energy efficient than the asset it is replacing or, if it is not a replacement, a new reasonably comparable asset available in the market (e.g., broadly, upgrading to a more energy efficient asset, or picking a more energy efficient new asset); or
- It is an energy storage, demand management or efficiency-improving asset.

Improvements to existing depreciating assets may also be eligible for the bonus deduction if they enable an asset to use electricity instead of fossil fuels, to be more energy efficient, or facilitate energy storage, demand management or monitoring.

Some exclusions will apply including electric vehicles, renewable electricity generation assets, capital works, and assets that are not connected to the electricity grid and use fossil fuels. Financing costs, including interest and borrowing expenses, are also excluded.

Eligible assets will need to be first used or installed ready for use, or the improvement costs incurred, between 1 July 2023 and 30 June 2024 to qualify for the bonus deduction.

This initiative is not yet law and we will keep you up to date on any progress.

Skills and training boost

The ‘skills and training boost’ is available to businesses with an aggregated annual turnover of less than $50 million.

The skills and training boost provides a bonus deduction equal to 20% of eligible expenditure for external training provided to your workers. The additional deduction is available for expenditure incurred (registered) from 7:30pm (AEST) on 29 March 2022 until 30 June 2024.

Not all courses provided by training companies will qualify for the boost; only those charged by registered training providers within their registration. Typically, this is vocational training to learn a trade or courses that count towards a qualification rather than professional development.

Sole Trader & Partnership Specific Matters

Making it easier to utilise losses

The ATO has extended some of its guidelines to the 2024 income year that make it easier for individual partners of a partnership that has made a business loss as a result of floods, fires or COVID-19 to apply their shares of the loss against income from other sources.

When an individual who is a partner in a partnership makes a loss from the business activities of the partnership the non-commercial loss rules prevent the loss from being applied against income from other sources unless certain conditions are satisfied. If the taxpayer is not able to pass the 'normal' tests to utilise their business losses against other income there is an opportunity to seek the Commissioner's discretion to enable the losses to be used.

In recent years, special circumstances such as flood, bushfire and COVID-19 may have led to individuals generating losses from their partnership business activities and might have made it difficult for the individual to pass the non-commercial loss rules. The ATO's guideline sets out a safe harbour position which allows taxpayers to utilise the losses as if the Commissioner had exercised discretion without needing to apply for this. While the safe harbour approach originally applied for the 2020, 2021, 2022 and 2023 income years, it has been extended to the 2024 income year.

To qualify for the safe harbour, the following conditions need to be satisfied:

- The individual must have adjusted taxable income of less than $250,000;
- The individual has made a loss from the partnership business activity;
- The business activity was affected by one or more of the following events:
  - Flood (including where receiving ATO flood support);
  - Bushfire (including where the business qualified for an ATO bushfire lodgement and payment deferral); or
  - A government-imposed lockdown, business closure and/or restriction due to COVID-19;
- The relevant event meant that the partnership was not able to carry on the business activity, or unable to carry it on to the same scale as was usual, or some or all of the customers of the business were not able to access the business activity, or access it in the same way as usual;
- The individual has not applied for a private ruling requesting the Commissioner exercise the 'special circumstances' discretion in relation to the business activity in the relevant income year; and
- The taxpayer has evidence to support that they are eligible for the safe harbour.

If you are not able to rely on the safe harbour approach, you can still potentially apply to the Commissioner to seek discretion in connection with the use of business losses against other income.

Financial 'housekeeping'

Having trouble with tax debt?

If you are having trouble paying your tax liability, please let us know as soon as possible so we can negotiate a deferral or payment plan with the ATO on your behalf.

Reporting payments to contractors

The taxable payments reporting system requires businesses in certain industries to report payments they make to contractors (individual and total for the year) to the ATO. 'Payment' means any form of consideration including non-cash benefits and constructive payments. Taxable payments reporting is required for:

- Building and construction services
- Cleaning services
- Courier and road freight services
- Information technology (IT) services
- Security, investigation or surveillance services
- Mixed services (providing one or more of the services listed above)

The annual report is due by 28 August 2024.

Director ID regime

The director ID regime prevents the use of false and fraudulent director identities.

While there was a transition phase to allow time for existing directors to obtain a director ID, this has now elapsed and all directors should have a director ID in place. Unregistered directors face criminal penalties of up to $16,500 and civil penalties of up to $ 1,375,000.

All incoming directors are required to obtain a director ID **prior** to their appointment as a director.

Before you roll-over your software…

Before rolling over your accounting software for the new financial year, make sure you:

- Prepare your financial year-end accounts. This way, any problems can be rectified and you have a 'clean slate' for the 2024-25 year. Once rolled over, the software cannot be amended.

- Do not finalise end of financial year payroll until you are sure that your STP finalisation declaration is correct. Always perform a payroll back-up before you roll over the year.

Employee reporting

Single touch payroll

For payments to employees through single touch payroll (STP), a finalisation declaration generally needs to be made by 14 July 2024. However, there are some exceptions to this.

If your business has 20 or more employees and some of them are closely held employees (relatives for example), then the finalisation declaration for the closely held employees needs to be made by 30 September.

If your business has 19 or fewer employees and they are only closely held employees, the finalisation declaration should be made by the due date for lodgement of the tax return of the relevant employee.

Employees will be able to access their Income Statement through their myGov account.

Closely held payees
Payments to closely held payees can be reported through STP in one of three ways:

- Reporting actual payments in real time - reporting each payment to a closely held payee on or before each pay event (essentially using STP 'as normal').
- Reporting actual payments quarterly - lodging a quarterly STP statement detailing these payments for the quarter, with the statement due when the activity statement is due.
- Reporting a reasonable estimate quarterly - lodging a quarterly STP statement estimating reasonable year-to-date amounts paid to employees, with the statement due when the activity statement is due.

Small employers that have arm's length employees must report STP information on or before each payday regardless of the method that is chosen for reporting payments to closely held payees.

If your business has closely held employees, it will be important to plan throughout the year to prevent problems occurring at year end.

Reportable Fringe Benefits

Where you have provided fringe benefits to your employees in excess of $2,000, you need to report the FBT grossed-up amount. This is referred to as a `Reportable Fringe Benefit Amount' (RFBA).

Do you need to do a stocktake?

Businesses that buy and sell stock generally need to do a stocktake at the end of each financial year as the increase or decrease in the value of stock is included when calculating the taxable income of your business.

If your business has an aggregated turnover below $50 million, you can use the simplified trading stock rules. Under these rules, you can choose not to conduct a stocktake for tax purposes if the difference in value between the opening value of your trading stock and a reasonable estimate of the closing value of trading stock at the end of the income year is less than $5,000. You will need to record how you determined the value of trading stock on hand.

If you do need to complete a stocktake, you can choose one of three methods to value trading stock:

- **Cost price** – all costs connected with the stock including freight, customs duty, and if manufacturing, labour and materials, plus a portion of fixed and variable factory overheads, etc.
- **Market selling value** - the current value of the stock you sell in the normal course of business (but not at a reduced value when you are forced to sell it).
- **Replacement value** - the price of a substantially similar replacement item in a normal market on the last day of the income year.

A different basis can be chosen for each class of stock or for individual items within a particular class of stock. This provides an opportunity to minimise the trading stock adjustment at year-end. There is no need to use the same method every year; you can choose the most tax effective option each year. The most obvious example is where the stock can be valued below its purchase price because of market conditions or damage that has occurred to the stock. This should give rise to a deduction even though the loss has not yet been incurred.

Motor Vehicles

Record Odometer readings at 30 June 2024 for all vehicles. An appropriate declaration is available on our website.

Reduce your risks & minimise your tax

Top tax tips

1. Write-off bad debts

To be a bad debt, you need to have brought the income to account as assessable income and given up all attempts to recover the debt. It needs to be written off your debtors' ledger by 30 June. If you don't maintain a debtors' ledger, a director's minute confirming the write-off is a good idea.

2. Review your asset register and scrap any obsolete plant

Check to see if obsolete plant and equipment is sitting on your depreciation schedule. Rather than depreciating a small amount each year, if the plant has become obsolete, scrap it and write it off before 30 June. Small business entities can choose to pool their assets and claim one deduction for each pool. This means you only have to do one calculation for the pool rather than for each asset.

3. Bring forward repairs, asset purchases less than $20,000, consumables, trade gifts or donations

To claim a deduction for the 2023-24 financial year, consider paying for any required repairs, replenishing consumable supplies, trade gifts or donations before 30 June.

4. Pay June quarter employee super contributions now

Pay June quarter super contributions this financial year if you want to claim a tax deduction in the current year. The next quarterly superannuation guarantee payment is due on 28 July 2024. However, some employers choose to make the payment early to bring forward the tax deduction instead of waiting another 12 months.

Don't forget yourself. Superannuation can be a great way to get tax relief and still build your personal wealth. Your personal or company sponsored contributions need to be received by the fund before 30 June to be deductible.

5. Realise any capital losses and reduce gains

Neutralise the tax effect of any capital gains you have made during the year by realising any capital losses – that is, sell the asset and lock in the capital loss. These need to be genuine transactions to be effective for tax purposes.

6. Prepay deductible Interest & Expenditure

Prepay interest or other deductible expenditure for a period of 12 months or less.

7. Defer Income

If possible defer income until after June 30 – send out invoices later but remember the flow on cash-flow effect.

8. Raise management fees between entities by June 30

Where management fees are charged between related entities, make sure that the charges have been raised by 30 June. Where management charges are made, make sure they are commercially reasonable and documentation is in place to support the transactions. If any transactions are undertaken with international related parties, then the transfer pricing rules need to be considered and the ATO's documentation expectations will be much greater. This is an area under increased scrutiny.

9. Declare dividends to pay any outstanding shareholder loan accounts

If your company has advanced funds to a shareholder or related party, paid expenses or allowed a shareholder or other related party to use assets owned by the company, then this can be treated as a taxable dividend. The regulators expect that top-up tax (if any applies) should be paid by shareholders at their marginal tax rate once they have access to these profits. When it comes to loans, a complying loan agreement can normally be used to prevent the full loan balance from being treated as a taxable dividend.

If you have any shareholder loan accounts from prior years that were placed under complying loan agreements, the minimum loan repayments need to be made by 30 June 2024. It may be necessary for the company to declare dividends before 30 June 2024 to make these loan repayments.

The tax rules in this area can be extraordinarily complex and can lead to some very harsh tax outcomes. It is important to talk to us as soon as possible if you think your company has made payments or advanced funds to shareholders or related parties.

10. Directors' fees and employee bonuses

Any expected directors' fees and employee bonuses may be deductible for the 2023-24 financial year if you have 'definitely committed' to the payment of a quantified amount by 30 June 2024, even if the fee or bonus is paid to the employee or director after 30 June 2024.

You would generally be definitely committed to the payment by year-end if the directors pass a properly authorised resolution to make the payment by year-end. The employer should also notify the employee of their entitlement to the payment or bonus before year-end.

The accrued directors' fees and bonuses need to be paid within a reasonable time period after year-end.

What we need from you

This is a general list of what to have ready when we next meet with you:

- Accounts data file access (MYOB, Quickbooks, Xero, etc.,)
- Debtors & creditors reconciliation
- Stocktake if applicable (or if your business is a Small Business Entity, use the simplified trading stock rules mentioned above)
- 30 June bank statements on all relevant loan documents, bank accounts and credit cards
- Documents on new assets bought or sold, including the date you entered the contract and the date the asset was first used or installed ready for use
- Documents supporting the sale or improvement of assets that are energy efficient
- Education and training expenses
- Details of any grants or disaster loans received
- Details of any insurance payouts for your business or business premises
- Payroll reconciliation
- Superannuation reconciliation
- Cash book (if applicable)
- Details of any transactions involving cryptocurrency (e.g., Bitcoin, NFTs)
- 30 June statements on any investment or operating accounts

And, if we are preparing your individual income tax return:

- Work from home diary

- Electric car details
- Income Statement
- Tax statements of managed investment funds
- Interest income from banks and building societies
- Dividend statements for dividends received
- For share sales or purchases, the purchase and sale contract notes
- For real estate sales or purchases, the solicitor's correspondence for the purchase and sale
- Rental property statements from real estate agent and details of other expenditure incurred
- Work related expenses
- Self-education expenses
- Travel expenses
- Donations to charities
- Health insurance and rebate entitlement
- Family Tax Benefits received
- Commonwealth assistance notices
- IAS statements or details of PAYG Instalments paid
- Details of any transactions involving cryptocurrency (e.g., Bitcoin, NFTs)
- Details of any income derived from participating in the sharing economy (e.g., Uber driving, rent from AirBNB, jobs completed through Airtasker etc.,)

Areas of ATO scrutiny

Profits of professional services firms

If your company operates a professional services firm, it is important to understand the implications of the ATO's finalised guidance on profits of professional services firms.

The ATO takes a strong stance on how the profits of professional services firms are structured and how profits flow through to the professionals involved. The ATO is specifically concerned with structures designed to divert income so the professional ends up receiving very little income directly for their work, reducing their taxable income.
If these structures appear to be in place to divert income to create a tax benefit for the professional, Part IVA may apply. Part IVA is an integrity rule that allows the Commissioner to remove any tax benefit received by a taxpayer where they entered into an arrangement in a contrived manner in order to obtain a tax benefit. Part IVA may apply to schemes designed to ensure that the professional is not appropriately rewarded for the services they provide to the business, or that they receive a reward which is substantially less than the value of those services.

The ATO guidance sets out a series of tests to identify a practitioner's risk level, looking at the structure of the business and how profits are distributed, and whether the structure has any high-risk features.

With the guidance finalised some time ago, the ATO has now been reaching out to taxpayers to review how they line up against its guidelines. For professional services firms, it is important to understand the risk level for each principal practitioner separately.

If you are concerned about your position, please contact us.

Companies: ATO focus of shareholder loans

Division 7A is an area of the tax law aimed at situations where a private company provides benefits to shareholders or their associates in the form of a loan, payment or by forgiving a debt. It can also apply where a trust has allocated income to a private company but has not actually paid it, and the trust has provided a payment or benefit to the company's shareholder or their associate.

Division 7A was introduced to prevent shareholders accessing company profits or assets without paying the appropriate tax. If triggered, the recipient of the benefit is taken to have received a deemed unfranked dividend for tax purposes and taxed at their marginal tax rate. This unfavourable tax outcome can be prevented by:

- Paying back the amount before the company tax return is due (this is often done via a set-off arrangement involving franked dividends); or
- Putting in place a complying loan agreement between the borrower and the company with minimum annual repayments at the benchmark interest rate (8.27% for 2023-24). It’s essential that annual repayments are actually made at the correct benchmark interest rate.

A recent ATO review revealed a series of problem areas where taxpayers are getting it wrong:

- Incorrect accounting for the use of company assets by shareholders and their associates. Often, the amounts are not recognised;
- Loans made without complying loan agreements;
- Reborrowing from the private company to make repayments on Division 7A loans;
- The wrong interest rate applied to Division 7A loans (there is a set rate that must be used).

Non-compliance can lead to some very harsh tax outcomes. It’s important to identify and ensure Division 7A problems are correctly managed.

Trusts: The ATO’s stance on trust distributions

The way in which trusts distribute income has come under intense scrutiny in recent years. As a result of this scrutiny, the ATO has issued new guidelines and warnings dealing with trust distribution arrangements which need to be carefully considered by trustee before taking steps to appoint or distribute income to beneficiaries.

Generally, the ATO will look for arrangements where amounts are allocated or appointed to beneficiaries, but they don't receive the real financial benefit of the distribution. If the arrangement has the effect of reducing the overall tax paid on the income of the trust then this will normally increase the level of risk involved.

Areas likely to attract the ATO's interest include:

- **Circular trust distributions** – where income is appointed from Trust 1 to Trust 2, with some or all of that amount being distributed back to Trust 1 (directly or indirectly). Alternatively, where a company pays dividends to a trust shareholder, which then distributes some of those dividends back to the company. See the red zone risk rating in *Section 100A guidelines and enforcement* below and *Anti-avoidance and 'round robin' trust distributions* in trust housekeeping below.
- **Differences between distributable income and taxable income** – the risk increases when it appears that deliberate attempts have been made to create or take advantage of these differences.
- **Distributions of franked dividends** - franking credit integrity rules are not applied or applied incorrectly when making or receiving franked distributions.
- **Distributions to SMSFs** – the tax treatment of non-arm's length income, entitlements as a result of loans from a related party, and a low rate of return received by an SMSF from its investments.
- **Distributions to tax-preferred beneficiaries** – distributions to tax-exempt entities where the amount is not actually paid across to the beneficiary, where losses are claimed against an entity's share of the trust's net income, where capital and carried forward losses are applied against the entity's share of the trust's capital gains, distributions to entities that pay no or very low rates of tax, distributions to foreign beneficiaries or entities, etc. See also *Tax exempt entities* in trust housekeeping below.
- **Family trust distributions tax** – where distributions made by a trust that has made a family trust election are outside of the family group.
- **Income recharacterisation arrangements** – where special purpose trusts recharacterise ordinary income as discountable capital gains, and where the character of trust income is changed to access the withholding tax provisions.
- **Loss trust moved into group** – where a trust with significant capital losses is moved into a group, the trust loss rules are ignored and related entities attempt to offset gains against the trust's losses.
- **Non-lodgement** – failure to lodge tax returns and meet compliance requirements.
- **Non-residents capital gains** – where capital gains are attributed to a non-resident beneficiary.
- **Potential reimbursement agreements** – where distributions are made to low taxed beneficiaries but the actual payment or economic benefit is directed to another person or entity. See the red zone risk rating in *Section 100A guidelines and enforcement* below.
- **Unit trusts** – where private companies invest in a unit trust and the cost of the units appear inflated, and where entitlements are retained in the trust or used to make loans or payments to shareholders or associates of shareholders of the private company.

Section 100A guidelines and enforcement

In 2022 the ATO issued some updated guidance which deals with the potential application of the integrity rules in section 100A to trust distribution arrangements. We now expect the ATO to be looking closely to ensure that the guidelines are being met.

Section 100A is aimed at situations where income of a trust is appointed in favour of a beneficiary but the real economic benefit of the distribution is provided to another individual or entity. If trust distributions are caught by section 100A, then this generally results in the trustee being taxed at penalty rates rather than the beneficiary being taxed at their own marginal tax rates.

Section 100A doesn't apply when distributions are made to minor beneficiaries or when the arrangement is part of an ordinary family or commercial dealing. The ATO guidelines look at a range of common scenarios and whether they would be fall within some specific 'risk zones'; white, green and red. Each zone determines the level of compliance resources that the ATO will dedicate to reviewing the arrangement:

White zone

Pre-1 July 2014 arrangements. The ATO will not look into these arrangements unless it is part of an ongoing investigation or for arrangements that continue after this date.

Green zone

Low risk arrangements unlikely to be reviewed by the ATO, assuming the arrangement is properly documented. For example, when a trust appoints income to an individual, but the funds are paid into a joint bank account that the individual holds with their spouse then this would ordinarily be a low-risk scenario. Or, where the trust income appointed to the beneficiary is paid within two years and used for their own benefit. Another example of a low-risk arrangement is where the funds are retained by the trust and used as working capital in the trust's business and the beneficiary controls the trustee.

Red zone

High risk arrangements that will be reviewed in detail.

Adult children

High on the ATO's list of red zone arrangements are where an adult child's entitlement to trust income is paid to a parent or other caregiver to reimburse them for expenses incurred before the adult child turned 18. For example, school fees at a private school. Or, where a loan (debit balance account) is provided by the trust to the adult child for expenses they incurred before they were 18 and the entitlement is used to pay off the loan.

Circular arrangements

Circular arrangements could also fall within the scope of section 100A. For example, section 100A could be triggered if:

- The trustee resolves to appoint income to a company at the end of year 1.
- The company includes its share of the trust's net income in its assessable income for year 1 and pays tax at the corporate rate.
- The company pays a fully franked dividend to the trustee in year 2, sourced from the trust income, and the dividend forms part of the trust income and net income in year 2.
- The trustee makes the company presently entitled to some or all of the trust income at the end of year 2 (which might include the franked distribution).
- These steps are repeated in subsequent years.

With the guidelines now finalised, the ATO is likely to be reviewing trust distribution arrangements in detail to consider where they sit on the three 'risk zones'.

It is essential to ensure that all trust distribution arrangements are reviewed with reference to the ATO's final guidance to determine the level of risk. It is also vital to ensure that appropriate documentation is in place to demonstrate how funds relating to trust distributions are being used or applied for the benefit of beneficiaries.

Trust 'housekeeping'

Payment deferrals

If you are having trouble paying your tax liability, please let us know as soon as possible so we can negotiate a deferral or payment plan with the ATO on your behalf.

TFN reporting

Has your trust lodged TFN reports for all beneficiaries?

Trustees of closely held trusts have some additional reporting obligations outside the lodgement of the trust tax return each year. The Australian Taxation Office (ATO) has been reviewing this area to ensure trustees comply with their obligations, particularly the requirement to lodge TFN reports for beneficiaries.

Where TFN provided

Where beneficiaries have quoted their TFN to the trustee, trustees are required to lodge a TFN report for each beneficiary. The TFN report must be lodged by the end of the month following the end of the quarter in which a beneficiary quoted their TFN. For example, if the trustee receives a beneficiary's TFN in April, they must lodge a TFN report by the end of July.

Where TFN not provided

Where a TFN has not been provided by a beneficiary, the trustee is required to withhold tax at a rate of 47% on distributions made to the beneficiary and pay this to the ATO. The trustee must also lodge an annual report of all amounts withheld.

Failure to comply with the TFN reporting and withholding requirements may trigger penalties.

Trust distributions

Validity of trust distributions

A recent Supreme Court case provides a warning around trust distribution decisions.

The Court found the trustee had failed to give real and genuine consideration to the position of the two beneficiaries of a discretionary trust. Those certain beneficiaries were largely estranged from the family and did not receive trust distributions for the relevant years.

The distributions were found to be invalid, and this case has potential ramifications for trustees exercising their discretion in appointing trust income, especially where some beneficiaries are being excluded due to personal relationships. In turn, if the trust distributions are found be invalid, this could have follow-on tax implications.

Timing of resolutions

Trustees (or directors of a trustee company) need to consider and decide on the distributions they plan to make by 30 June 2024 at the latest (the trust deed may actually require this to be done earlier).

Decisions made by the trustees should be documented in writing, preferably by 30 June 2024.

If valid resolutions are not in place by 30 June 2024, the risk is that the taxable income of the trust will be assessed in the hands of a default beneficiary (if the trust deed provides for this) or the trustee (in which case the highest marginal rate of tax would normally apply).

Anti-avoidance and 'round robin' trust distributions

Anti-avoidance measures prevent family trusts engaging in 'round robin' circular trust distributions with other closely held trusts.

The rules impose penalty rates of tax in situations where trust income is distributed to one or more other trusts and ends up being distributed back to the first trust. Before 1 July 2019, trusts that had made a family trust election were excluded from these rules but that is no longer the case.

Distributions to non-resident beneficiaries

In some circumstances, non-resident beneficiaries can be taxed in Australia on gains relating to foreign assets, which would not have been taxed in Australia had they been made by the beneficiary directly.

If a resident discretionary trust makes a capital gain, the ATO expects that this will normally be taxed in Australia, even if the gain is distributed to a non-resident beneficiary, even if the gain does not relate to Taxable Australian Property (TAP) and even if the gain has a foreign source. Given that non-resident beneficiaries will be taxed at non-resident tax rates and may not have access to the full CGT discount, it will be important for trustees to consider this carefully when deciding on distributions for trusts that have a mixture of resident and non-resident beneficiaries.

The ATO's determinations do not take into account the possible application of any double tax agreements. This is another issue that would need to be considered to reach a conclusion on how distributions are likely to be taxed in the hands of non-resident beneficiaries.

Low-income tax offset and minors reminder

The low-income offset is not available to minors who only receive ‘unearned’ income (e.g. distributions from a discretionary trust). Minors who only receive ‘unearned’ income will normally be subject to penalty rates of tax on income that exceeds $416.

Normal marginal tax rates can potentially still apply to minors who receive distributions from a deceased estate or testamentary trust. However, recent amendments to the rules in this area are aimed at ensuring that minors are only taxed at adult marginal tax rates in respect of the income a testamentary trust generates from assets of the deceased estate (or the proceeds of the disposal or investment of these assets).

Streaming of franked dividends and capital gains

Trustees are only able to stream franked dividends (and the franking credits that are attached to those dividends) to a particular beneficiary for tax purposes if the beneficiary’s entitlement to the franked dividends is recorded in writing by 30 June 2024. For streaming of capital gains to be effective for tax purposes, the beneficiary’s entitlement must be recorded in writing by 30 June if the capital gains form part of trust income for the year or 31 August if the capital gains do not form part of trust income.

We can assist you with this process if you do wish to stream franked dividends or capital gains to specific beneficiaries.

Tax exempt entities

If a trustee resolves to distribute income to a tax-exempt entity, the trustee will be assessed on that income at the top marginal tax rate unless:

- The trustee actually pays the entire distribution within 2 months of the end of the income year; or
- The trustee notifies the entity in writing of its entitlement within 2 months of the end of the income year.

Also, anti-avoidance rules tax the trustee on a portion of the income distributed to a tax-exempt entity where there is a mismatch between the net financial benefit to be received by the entity and the tax treatment of the distribution.